

Before the  
Federal Communications Commission  
Washington, DC

**RECEIVED**

**FEB 28 1997**

**ORIGINAL**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of

Closed Captioning and Video Description  
of Video Programming

Implementation of Section 305 of the  
Telecommunications Act of 1996

Video Programming Accessibility

MM Docket No. 95-176

To: The Commission

**COMMENTS OF UNITED VIDEO SATELLITE GROUP, INC.**

United Video Satellite Group, Inc. ("United Video") submits these comments in response to the Commission's proposal to make all multichannel video program providers ("MVPDs") responsible for captioning the video programming they distribute and sell to subscribers. MVPDs that sell programming services to C-Band Home Satellite Dish ("HSD") and the high power Direct Broadcast Satellite ("DBS") subscribers cannot legally or practically insert closed captioning into the program material they transmit and sell. Moreover, the satellite carriers that distribute superstation programming to the HSD, DBS and cable markets are prohibited by the Copyright laws from altering the program content of the superstations they carry.

No. of Copies rec'd  
List ABCDE

0211

United Video is the parent of UVTV, a satellite carrier that uplinks superstations WGN-TV and WPIX-TV for wholesale distribution to the cable television and HSD markets. Superstar Satellite Entertainment ("Superstar"), an affiliate of United Video, is also a satellite carrier that uplinks superstation KTLA-TV for wholesale distribution to the HSD and cable television markets. Both UVTV and Superstar also deliver the same broadcast signals to DBS carriers for uplinking and distributing to DBS subscribers. Superstar/Netlink Group, LLC ("SNG"), is a retail sales affiliate selling the above superstations, other satellite broadcast programming and satellite cable programming to the HSD market.

Under the Commission's proposal, UVTV, Superstar and SNG would be responsible as MVPDs, along with over-the-air broadcasters, cable television operators, SMATV, MMDS, LMDS, ITFS and OVS operators, to ensure closed captioning of the video program material they distribute. The Commission recognizes that, to the extent an MVPD does not produce its own programming, it will be the video producers' responsibility to caption its programming, but the Commission proposes to leave the regulatory obligation on the MVPD and to use its jurisdiction over the MVPD to enforce the rule.

This approach is appropriate with respect to over-the-air broadcasters that are FCC licensees and have influence over the production of programming through their collective purchasing power. Cable operators, while not FCC "licensees," at least have the editorial flexibility to choose their non-broadcast programming and can, through their contractual powers, influence the captioning of the programming they purchase. On the other hand, United Video

and its affiliates, UVTV and Superstar, distribute a highly unique and limited selection of programming, all which is broadcast programming. Thus, enforcement of any closed captioning requirement is already assured through the Commission's jurisdiction over the broadcasters themselves. There is no need to include distributors of broadcast programming like UVTV and Superstar. Moreover, SNG, as a retail seller of satellite broadcast and satellite cable programming has no opportunity to either intercept or insert any captioning or other material into the programming they sell. Accordingly, entities such as SNG should not have any residual obligation to caption programming either.

In addition, satellite carriers such as United Video and its affiliates are not permitted to modify the satellite broadcast programming that they uplink and distribute. The distribution of satellite broadcast signals to HSD and DBS subscribers is governed by the Satellite Home Viewer Act, Section 119 of the Copyright Act of 1976, 17 U. S. C. § 119 ("SHVA"). SHVA established a compulsory licensing scheme for the HSD and DBS markets similar to that for cable television. Section 119 (a)(4) forbids any willful alteration of the content of any satellite broadcast signal secondarily transmitted by a satellite carrier. While satellite carriers may add non-program related materials to the subcarrier or vertical blanking interval of a broadcast transmission, they are not allowed to alter the program related material.<sup>1</sup> Line 21 of the vertical blanking interval is set aside for closed captioning and is a part of the material

---

<sup>1</sup> In *WGN Continental Broadcasting Co. v. United Video, Inc.*, 693 F.2d 622, 628 (7th Cir. 1982), rev'g 523 F. Supp. 403 (N.D. Ill. 1987), the court held that a television broadcast, together with accompanying material included in the vertical blanking interval intended to be seen by the viewers of the program during the same time interval and as an integral part of the program, constitute a single copyrighted work. The video and vertical blanking material are "related" and, therefore, a part of a the same work if they are intended for the same audience during the same time interval.

intended for transmission to the public. Any material that a satellite carrier would insert related to that programming would, by its very nature, constitute an alteration of the broadcast signal and therefore copyright infringement. Moreover, HSD and DBS distributors, to the extent they are not even a participant in the uplinking process, would not have any opportunity to insert or add any material for purposes of closed-captioning.

It would be appropriate for the producers of programming to have the sole obligation and responsibility for closed captioning. For satellite broadcast programming distributed in compliance with SHVA, the Commission should exempt all carriers and MVPDs and place the requirement for captioning directly on the producers of the programming. For non-broadcast satellite programming, the Commission could require that all new contracts contain provisions requiring producers to caption programming consistent with the proposed regulations.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph E. Reifer

John D. Seiver

**COLE, RAYWID & BRAVERMAN, L.L.P.**

1919 Pennsylvania Avenue, NW

Washington, D.C. 20006

(202) 659-9750

**Attorneys for United Video Satellite Group, Inc.**

February 28, 1997